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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HON. ROGER BENITEZ)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEJANDRO SAUCEDO-VIRGEN,

Defendant.

Case No. 07-CR-3315-1-BEN

IN LIMINE MOTIONS PERTAINING
 TO TRIAL; ATTORNEY REQUESTS
 OPPORTUNITY TO VOIR DIRE
 JURY AND PROPOSED VOIR DIRE
 QUESTIONS

DATE: February 11, 2008
 TIME: 2:00 p.m.

STATEMENT OF FACTS

This statement of facts is based on the government's reports and interviews that it conducted at the time of the arrest. It is therefore subject to amplification and/or correction during the hearing on the motions in limine and/or during trial. The basic facts are, that the defendant drove a vehicle to the border. The customs inspector was suspicious upon a visual inspection wherein he looked underneath the vehicle. A canine officer utilizing a dog checked the vehicle and defendant was referred to secondary where a more complete and detailed inspection was undertaken. Three young women were removed from a compartment underneath the center of the vehicle. At the time of his interview, defendant denied any knowledge of the smuggled individuals and none of the material witnesses could identify or implicate the defendant.

Based on the foregoing, the defendant thereby makes the following motions in limine.

I.

**ANY ATTEMPT BY THE GOVERNMENT TO DELIVER EXPERT TESTIMONY
CONCERNING THE NATURE AND HIERARCHY OF DRUG SMUGGLING
ORGANIZATIONS MUST BE EXCLUDED.**

The government has represented that it has produced all of the discovery necessary to try this case and they have not presented any information or evidence of experts with respect to blind mules or modifications therein. Therefore, these cases are analogous to the drug cases wherein discussions of States v. Vallejo, 237 F.3d 1008, as amended, 246 F.3d 1150 (9th Cir. 2001); United States v. McGowan, 274 F.3d 1251 (9th Cir. 2001); United States v. Pineda-Torres, 287 F.3d 860 (9th Cir. 2002); Fed. R. Evid. 403, 704(b). If there is any attempt to introduce expert testimony, it must either be excluded or the defense must have the opportunity to question the witness prior to testimony. Likewise, any attempts by governments to use experts to render opinions must be excluded. It is also requested the court consider the example of United States v. Murillo, 255 F.3d 1169 (9th Cir. 2001), in attempting to make analogous Murillo-type expert testimony improper and proffers as evidence. It could be particularly true in view of the fact that the government has not at this juncture identified any expert witnesses to the defense and/or their qualifications. Therefore, any testimony along those lines must be excluded. We would therefore also request that the court exclude any evidence of expert testimony in pursuant to Federal Rule of Evidence section 704(b) and Federal Rule 403 if applicable. Likewise, if the government is seeking to introduce this then the court needs to hold an evidentiary hearing pursuant to Federal Rules of Evidence 104 before it is allowed.

II.

**EVIDENCE OF “NERVOUSNESS” LACKS PROBATIVE VALUE, IS OVERLY
PREJUDICIAL AND LACKS PROPER FOUNDATION**

In the reports provided by the government, there was an allegation that defendant was nervous. We are asking that that be excluded as its probative value is substantially

1 outweighed by a danger of unfair prejudice pursuant to Federal Rules of Evidence 403.
 2 Likewise, any admission of nervous testimony violates Rule section 701 and 704(b).

3 **III.**

4 **ANY EVIDENCE RELATING TO THE POVERTY OF THE DEFENDANT** 5 **SHOULD BE EXCLUDED AS INAPPROPRIATE FOR THE GOVERNMENT TO** 6 **ATTEMPT TO SHOW MOTIVATION**

7 It is impermissible for the prosecution to elicit testimony or to comment in any
 8 fashion upon the difficult financial circumstances of the defendant. Such comments upon
 9 poverty are forbidden. United States v. Romero-Avila, 210 F.3d 1017, 1022 n.2 (9th Cir.
 10 2000).

11 **IV**

12 **NO EVIDENCE OF PRIOR CRIMES OR BAD ACTS**

13 The government has not shown that there is any 404(b) evidence against this
 14 defendant as he appears to have no record whatsoever. Should there be any at this stage of
 15 discovery, we would ask that it be excluded. There is no evidence the defendant has any
 16 convictions either as to Rule 609 and therefore should he chose to testify, he cannot be
 17 impeached.

18 **V**

19 **THE DEFENSE SHOULD BE ALLOWED TO USE EVIDENCE OF** 20 **DOCUMENTATION OF A THIRD PARTY CULPABILITY IN ITS OPENING** 21 **STATEMENT**

22 There is a reference in the discovery to an individual named Rudy who arranged for
 23 the use of this vehicle. The existence of this individual should be allowed into evidence in
 24 the defense case in chief and also allow defense counsel to make reference to his existence in
 25 the opening statement.

26 **VI**

27 **ATTORNEY REQUESTS OPPORTUNITY TO VOIR DIRE THE JURY**

28 The defendant respectfully requests the opportunity to voir dire the jury by defense

1 counsel.

2 **VII**

3 **ATTORNEY'S PROPOSED VOIR DIRE QUESTIONS**

4 The defendant also wishes to submit proposed voir dire questions as follows:

- 5 1. Mr. Saucedo-Virgen is being charged with a crime that has a different standard of
6 proof than immigration court. Is anyone uncomfortable with that idea?
- 7 2. Does anyone have such strong feelings against illegal immigration that they feel that
8 they might be unable to weigh the evidence in this case to determine whether the government
9 has proven its accusations?
- 10 3. Has the publicity given to illegal immigration so affected you that you it's possible
11 that you could not be fair and impartial in this case?
- 12 4. Do you have any strong feelings about workers from Mexico who come to the U.S.
13 with legal papers? Without legal papers?
- 14 5. What do you think happens to undocumented workers when they are caught entering
15 the U.S. without legal papers? Yes, and...
- 16 6. Do you believe, for example, that there is a "flood" of illegal immigrants coming into
17 the U.S. or that illegal immigrants contribute significantly to unemployment and welfare
18 problems?
- 19 7. Much of the trial today will involve immigration law. What do you think of the
20 current immigration laws?
- 21 8. Does anybody think that the immigration laws are too strict? Too lenient? If so how
22 would you change them?
- 23 9. What worries you the most about our immigration laws being too lenient?
- 24 10. Does anyone believe that the immigration laws are adequate but feel that they are not
25 enforced properly or fairly?
- 26
- 27 11. Does anyone feel that Mexican immigrants are treated differently then immigrants
28 from other countries?

1 12. Do you think that prejudice against Mexicans is on the increase or on the decline in
2 California? Why?

3 13. Do you think it is harder to enter the United States from Europe than it is from
4 Mexico?

5 14. Does anyone think that anyone that wants to enter the U.S. should be able to,
6 regardless of their citizenship? What type of restrictions should we have?

7 15. How many of you have been referred to secondary inspection at the border crossing
8 from Mexico? How were you treated? Did you feel that you were pulled over because of the
9 way you look?

10 16. How do you feel about profiling?

11 17. Is there anyone here who is not familiar with the port of entry? Is there anybody who
12 has never traveled internationally? How many people have NEVER crossed the border?

13 18. Does anyone have strong feelings about undocumented people using social services?

14 19. Do you think that non-citizens pay taxes?

15 20. Does anyone think that undocumented immigrants have too many rights in the United
16 States?

17 21. Does anyone think that in a criminal case, they should not have the same rights as
18 U.S.C.s?

19 22. Supply and demand, does anyone here believe that the companies that employ
20 undocumented workers are more to blame than the workers for contributing to the
21 immigration problems in the United States. Who do you believe should be blamed? Who do
22 you think is blamed?

23 23. If the Judge instructs you that the defendant is entitled to be presumed innocent, the
24 government has the burden. Will you be able to follow those instructions knowing that the
25 defendant was born outside the U.S. and only came to the U.S. later and became an LPR?

26 24. Do you think police corruption exists in Mexico?

27 25. Do you think that some law enforcement officials in Mexico take bribes to facilitate
28 the immigrant smuggling?

1 26. Do you think that it is possible that some United States law enforcement officers are
2 involved in taking bribes to facilitate immigrant smuggling?

3 27. You might hear that the defendant in this case has had contact with the immigration
4 system prior to the offense for which he stands accused. Would anyone have trouble keeping
5 an open mind as to the evidence presented at this trial, and for these charges, if the
6 government does indeed present evidence of past contact with immigration officials? Would
7 anyone feel tempted to treat the defendant differently based solely on this evidence?

8 28. Some people have a lot of contact with people from Mexico. Other people have very
9 little contact with people from Mexico. How many of you have what you would say is a lot
10 of contact with people from Mexico?

11 29. How many of you have little to no contact with people from Mexico?

12 30. Do you think that the United States spends too much money on immigration issues?

13 31. What do you think the primary role of the U.S. Border Patrol is? To protect us from
14 what?

15 32. Until you heard what this case was about, how many of you thought that illegal
16 immigration was a felony punishable by time in a federal prison?

17 33. How many of you thought that if someone came to this country illegally they were just
18 sent back?

19 34. How do you feel about someone being charged with a felony for coming into this
20 country?

21 35. Did you know that it's not the jury's role to decide if he stays in this country? That is
22 the immigration court's decision. You are only here to decide if he is guilty of a felony.

23 36. Mr. Saucedo-Virgen is charged with a felony offense, punishable by time in prison.
24 You are not here to decide if Mr. Saucedo-Virgen stays in the country. You're here to decide
25 if he committed a crime. How do you feel about someone being charged with a felony for an
26 immigration violation?

27 37. How many of you have traveled abroad?

28 38. Has anyone ever lost their passport? Imagine that you were trespassing on private

1 property while on vacation abroad and were stopped by the police. Since you had lost your
2 passport would you be afraid that you might be sent to jail? Would you worry that you might
3 have to stay in jail until your status was figured out?

4 39. Has anyone ever been employed in a seasonal or temporary job? Have you ever
5 worked a "second" job during the off season? Why?

6 40. Has anyone ever worked or known someone in the agriculture business? What type of
7 job did/you they have?

8 41. Are any of you naturalized citizens? What do you think about the process of becoming
9 a citizen?

10 42. Does anyone here have family members that were born outside the United States? Do
11 they have a citizen certificate? That is different than a birth certificate.

12 43. Have you, your family members, or friends known anyone who is or has been in the
13 country illegally?

14 44. Do any of you have friends or family members who work for the INS (DHS)? What
15 do they do? Do you discuss their work with them? Would that affect your ability to be fair
16 and impartial in this case?

17 45. Do any of you have friends or relatives who have been deported? How long ago?
18 What were the circumstances? What do you think of their experience? Does the fact that you
19 know someone who has been deported make you more sympathetic to those facing
20 deportation?

21 46. Is there anyone here that, although you felt that Mr. Saucedo-Virgen was not guilty
22 due to a loophole in the law, couldn't vote not guilty? (Official Restraint)

23 Dated: February 4, 2008

Respectfully submitted,

24 /s/ Paul W. Blake
25 PAUL W. BLAKE
26 Attorney for Defendant
ALEJANDRO SAUCEDO-VIRGEN

27 1:Blake\Virgen.MIL 013008.wpd
28

CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of his information and belief, and that a copy of the foregoing documents:

IN LIMINE MOTIONS PERTAINING TO TRIAL

was served on February 4, 2008, upon the below named parties:

MAILING INFORMATION FOR A CASE 07-CR-3315-1-BEN

1. Electronic Mail Notice List

The following are those who are currently on the list to receive email notices for this case.

Jill Burkhardt, Burkhardt.Jill@usdoj.gov, efile.dkt.gc1@usdoj.gov

Date: February 4, 2008, /s/ Paul W. Blake
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